

**** E-filed April 26, 2011 ****

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHARMAIN A. ABRAZADO,

No. C10-03163 HRL

Plaintiff,

**ORDER THAT CASE BE
REASSIGNED TO A DISTRICT
JUDGE**

v.

THE GOVERNMENT STATE OF
CALIFORNIA, et al.,

REPORT AND RECOMMENDATION

Defendants.

Plaintiff instituted this action in July 2010. Docket No. 1. For the next several months, Plaintiff submitted to the Court numerous papers and other items, many of which appear to be completely unrelated to her action (such as a traffic cone, a candle, magazines, items of clothing, and even actual garbage). See Docket Nos. 4-49, 51-82; see also Docket No. 50 (order limiting the documents and items that Plaintiff may file without first receiving prior court approval). Despite her energy, she did not serve Defendants. See generally, Docket. At an October 5, 2010 case management conference, the Court advised Plaintiff that she needed to properly serve Defendants in this action in order for it to go forward. See Docket No. 69. This Court's order following that conference restated the same. See Docket No. 71.

On October 21, 2010, Plaintiff filed what purported to be proof of service of Defendants. See Docket No. 72. However, upon review of the documents submitted, it appears that Plaintiff did not properly serve them. See id. Thus, the Court ordered Plaintiff to appear on April 26, 2011 and show

1 cause why her case should not be dismissed for failure to prosecute. Docket No. 84. Plaintiff failed
2 to do so. Docket No. 85.

3 A court has authority to dismiss a plaintiff's action *sua sponte* due to failure to prosecute.
4 Link v. Wabash R. Co., 370 U.S. 626, 629-30 (1962). When considering dismissal for lack of
5 prosecution, a district court must weigh the court's need to manage its docket, the public interest in
6 expeditious resolution of litigation, and the risk of prejudice to the defendants against the policy
7 favoring disposition of cases on their merits, and the availability of less drastic sanctions. Ash v.
8 Cvetkov, 739 F.2d 493, 496 (9th Cir. 1984).

9 Here, Plaintiff failed to appear after being ordered to do so. She was warned that failing to
10 appear or communicate with the Court would result in dismissal. She was given many opportunities
11 to serve Defendants properly, but she failed to do so. It is unfair to Defendants to leave the case
12 pending and unresolved indefinitely. Plaintiff's actions exhibit a disinterest in pursuing this case
13 and judicial resources cannot continue to be wasted by permitting it to linger. Plaintiff has left the
14 Court with no appropriate alternative but to recommend that the case be dismissed.

15 Because no party has consented to the undersigned's jurisdiction, this Court ORDERS the
16 Clerk of the Court to reassign this case to a district court judge. The undersigned further
17 RECOMMENDS that the newly-assigned district court judge dismiss this action without prejudice
18 for the reasons set forth above.

19 Plaintiff is also reminded that, upon conclusion of this proceeding, she must remove all of
20 the papers and other items she submitted, which have been kept by the Clerk of the Court, in
21 accordance with this District's Civil Local Rules. See Civ. L.R. 79-4(b). Should she fail to do so, the
22 Clerk of the Court may destroy or otherwise dispose of the items within 21 days after the time set
23 for removal. See Civ. L.R. 79-4(c).

24 Pursuant to Federal Rule of Civil Procedure 72(b), any party may serve and file objections to
25 this Report and Recommendation within fourteen days after being served.

26 **IT IS SO ORDERED.**

27 Dated: April 26, 2011

28 

HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

C10-03163 HRL Notice will be electronically mailed to:

Notice will be provided by other means to:

Charmain A. Abrazado
PO Box 4234
Santa Clara, CA 95056

Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.